

Judge Kymberly K. Evanson

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TYLER NEIN, an individual,

PLAINTIFF,

V.

STATE FARM FIRE AND CASUALTY
COMPANY, a foreign corporation,

DEFENDANT.

NO. 2:23-cv-00683-KKE

STIPULATED PROTECTIVE ORDER

NOTED FOR: DECEMBER 27, 2023

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private Information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

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NO. 2:23-cv-00683-TIL Pg. – 1

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1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material may include such documents as a party designates
3 confidential as provided herein.
4

- 5 1. Attorney client communications and work product, without waiver of *any*
6 claims of privilege or other protection relating to these communication;
- 7 2. Sensitive personal information, such as Social Security Numbers and
8 financial records. This includes tax records, bank account statements and
9 bookkeeping records that were not previously provided to State Farm as part
10 of the claims process or underwriting process.
- 11 3. Claims training and procedure manuals and other materials that contain
12 trade secret or other confidential and proprietary research, development
13 and/or commercial information of State Farm relating to first-party property
14 coverage and/or claims.
- 15 4. Materials relating to claim personnel involved in handling and/or adjusting
16 the subject claim, including but not limited to evaluations, compensation,
17 employee performance reviews and/or other sensitive, private information.
- 18 5. Materials containing trade secrets or confidential research, development,
19 proprietary claims-handling philosophies, insurance pricing and/or other
20 valuable information developed through State Farm’s industry experience
21 and creative efforts or any other exclusive industry information.
- 22 6. Proprietary, confidential, competitively sensitive, internal-use only or trade
23 secret information of State Farm and its related entities, including but not
24 limited to financial information, training materials, and contracts or
25 agreements with third parties, and
7. Any non-public material of sensitive or proprietary nature.

1 Plaintiff and Defendant State Farm (hereinafter collectively referred to as “the
2 Parties”) reserve the right to seek by stipulation or motion to enlarge this list as
3 discovery proceeds in the event that the Parties seek additional information not
4 included in the above description which the parties maintain is entitled to the
5 protections of this agreement and is otherwise discoverable under FRCP 26.

6 3. SCOPE

7
8 3.1 The protections conferred by this agreement cover not only confidential
9 material (as defined above), but also (1) any information copied or extracted from
10 confidential material; (2) all copies, excerpts, summaries, or compilations of confidential
11 material; and (3) any testimony, conversations, or presentations by parties or their
12 counsel that might reveal confidential material. Notwithstanding the above, information
13 derived from confidential material that does not itself qualify as confidential (because, for
14 example, it does not contain competitively sensitive information), is not considered
15 confidential material. However, the protections conferred by this agreement do not cover
16 information that is in the public domain or becomes part of the public domain through trial or
17 otherwise. Confidential material is not considered part of the public domain at trial or
18 otherwise when Parties adhere to sections 4.2 and 4.3. All such information retains its
19 confidential protections if use was pursuant to a Protective Order, Confidentiality Agreement,
20 Order of a Court, governmental subpoena, regulatory compliance activity, or inadvertent
21 disclosure that was subsequently remedied.
22

23
24 3.2 Nothing in this agreement shall be construed to prohibit, restrict or require
25 State Farm to obtain an authorization for the retention, use or disclosure of nonpublic

1 Confidential Information and records as required by its Information Retention
 2 Schedules, federal or state law or regulation, court order, or rule, including but not
 3 limited to, Medicare authorities if reporting is applicable, to a third-party for analysis of
 4 records in anti-fraud efforts (using non-fraudulent data to benchmark), in reporting for
 5 rate-making or otherwise, and in paperless electronic claims systems for permissible
 6 insurance functions. Nothing in this order shall prevent State Farm from retaining all
 7 documents necessary for regulatory compliance activities, nor from producing any
 8 documents necessary for regulatory compliance activities.

9 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

10
 11 4.1 Basic Principles. Except for the permissible uses described in Section 3, a
 12 receiving party may use confidential material that is disclosed or produced by another
 13 party or by a non-party in connection with this case only for prosecuting, defending, or
 14 attempting to settle this litigation. With the exception of the circumstances described in
 15 Section 3, confidential material may be disclosed only to the categories of persons and
 16 under the conditions described in this agreement. Confidential material must be stored
 17 and maintained by a receiving party at a location and in a secure manner that ensures
 18 that access is limited to the persons authorized under this agreement.

19 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
 20 otherwise ordered by the court or permitted in writing by the designating party, a
 21 receiving party may disclose any confidential material only to:

- 22 (a) the receiving party’s counsel of record in this action, as well as
 23 employees of counsel to whom it is reasonably necessary to disclose the
 24 information for this litigation;
 25

1 (b) the officers, directors, and employees (including in house counsel) of
2 the receiving party to whom disclosure is reasonably necessary for this
3 litigation, unless the parties agree that a particular document or material
4 produced is for Attorney's Eyes Only and is so designated;

5 (c) experts and consultants who have signed the "Acknowledgment and
6 Agreement to Be Bound" (Exhibit A) and whose analysis receiving
7 party's counsel of record reasonably believes would be assisted by access
8 to the confidential material. The Parties agree to provide signed
9 acknowledgements from each expert with any expert disclosures at
10 deposition or trial, as applicable. *See* Fed. Civ. P. 26(a)(2);

11 (d) the court, court personnel, and court reporters and their staff;

12 (e) copy or imaging services retained by counsel to assist in the
13 duplication of confidential material, provided that counsel for the party
14 retaining the copy or imaging service instructs the service not to disclose
15 any confidential material to third parties and to immediately return all
16 originals and copies of any confidential material;

17 (f) in preparation for and during their depositions, witnesses in the action
18 to whom counsel of record reasonably believes disclosure is reasonably
19 necessary and who have signed the "Acknowledgment and Agreement to
20 Be Bound" (Exhibit A), unless otherwise agreed by the designating party
21 or ordered by the court. Any person presented as a witness pursuant to
22 Fed. R. Civ. P. 30(b)(6) must sign Exhibit A. Pages of transcribed
23 deposition testimony or exhibits to depositions that reveal confidential
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1 material must be separately bound by the court reporter and may not be
2 disclosed to anyone except as permitted under this agreement;

3 (g) the author or recipient of a document containing the information or a
4 custodian or other person who otherwise possessed or knew the
5 information;

6
7 (h) any mediator retained by the parties for dispute resolution;

8 (i) the Division of Insurance, law enforcement officers and/or other
9 government agencies, as required by applicable state and federal law.
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11 4.3 Filing Confidential Material. Before filing confidential material or
12 discussing or referencing such material in court filings, the filing party shall confer with
13 the designating party, in accordance with Local Civil Rule 5(g)(3)(A), to determine
14 whether the designating party will remove the confidential designation, whether the
15 document can be redacted, or whether a motion to seal or stipulation and proposed
16 order is warranted. During the meet and confer process, the designating party must
17 identify the basis for sealing or redacting the specific confidential information at issue,
18 and the filing party shall include this basis in its motion to seal, along with any
19 objection to sealing or redacting the information at issue. Local Civil Rule 5(g) sets
20 forth the procedures that must be followed and the standards that will be applied when
21 a party seeks permission from the court to file material under seal. A party who seeks to
22 maintain the confidentiality of its information must satisfy the requirements of Local
23 Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal. Failure to
24 satisfy this requirement will result in the motion to seal being denied, without prejudice.

25 5. DESIGNATING PROTECTED MATERIAL

1 5.1 Exercise of Restraint and Care in Designating Material for Protection.

2 Each party or non-party that designates information or items for protection under this
3 agreement must take care to limit any such designation to specific material that qualifies
4 under the appropriate standards. The designating party must designate for protection
5 only those parts of material, documents, items, or oral or written communications that
6 qualify, so that other portions of the material, documents, items, or communications for
7 which protection is not warranted are not swept unjustifiably within the ambit of this
8 agreement.

9 Mass, indiscriminate, or routinized designations are prohibited. Designations
10 that are shown to be clearly unjustified or that have been made for an improper purpose
11 (e.g., to unnecessarily encumber or delay the case development process or to impose
12 unnecessary expenses and burdens on other parties) expose the designating party to
13 sanctions.

14 If it comes to a designating party's attention that information or items that it
15 designated for protection do not qualify for protection, the designating party must
16 promptly notify all other parties that it is withdrawing the mistaken designation.
17

18 5.2 Manner and Timing of Designations. Except as otherwise provided in
19 this agreement (see, e.g., second paragraph of section 5.2(b) below), or as otherwise
20 stipulated or ordered, disclosure or discovery material that qualifies for protection under
21 this agreement must be clearly so designated before or when the material is disclosed or
22 produced.

23 (a) Information in documentary form: (e.g., paper or electronic
24 documents and deposition exhibits, but excluding transcripts of
25 depositions or other pretrial or trial proceedings), the designating party

1 must affix the word “CONFIDENTIAL” to each page that contains
 2 confidential material. If only a portion or portions of the material on a
 3 page qualifies for protection, the producing party also must clearly
 4 identify the protected portion(s) (e.g., by making appropriate markings in
 5 the margins).

6 (b) Testimony given in deposition or in other pretrial proceedings: the
 7 parties and any participating non-parties must identify on the record,
 8 during the deposition or other pretrial proceeding, all protected
 9 testimony, without prejudice to their right to so designate other testimony
 10 after reviewing the transcript. Any party or non-party may, within fifteen
 11 days after receiving the transcript of the deposition or other pretrial
 12 proceeding, designate portions of the transcript, or exhibits thereto, as
 13 confidential. If a party or non-party desires to protect confidential
 14 information at trial, the issue should be addressed during the pre-trial
 15 conference.

16 (c) Other tangible items: the producing party must affix in a prominent
 17 place on the exterior of the container or containers in which the
 18 information or item is stored the word “CONFIDENTIAL.” If only a
 19 portion or portions of the information or item warrant protection, the
 20 producing party, to the extent practicable, shall identify the protected
 21 portion(s).

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 23 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
 24 failure to designate qualified information or items does not, standing alone, waive the
 25 designating party’s right to secure protection under this agreement for such material.

Upon timely correction of a designation, the receiving party must make reasonable

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1 efforts to ensure that the material is treated in accordance with the provisions of this
2 agreement.

3
4 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

5 6.1 Timing of Challenges. Any party or non-party may challenge a
6 designation of confidentiality at any time. Unless a prompt challenge to a designating
7 party's confidentiality designation is necessary to avoid foreseeable, substantial
8 unfairness, unnecessary economic burdens, or a significant disruption or delay of the
9 litigation, a party does not waive its right to challenge a confidentiality designation by
10 electing not to mount a challenge promptly after the original designation is disclosed.

11 6.2 Meet and Confer. The parties must make every attempt to resolve any
12 dispute regarding confidential designations without court involvement. The party
13 challenging the designation shall initiate the dispute resolution process by providing
14 written notice of each designation it is challenging and describing the basis for each
15 challenge. The parties shall attempt to resolve each challenge in good faith within 14
16 days of the service of notice. A good faith effort to confer requires a face-to-face meeting
17 or a telephone conference.

18 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
19 court intervention, the designating party may file and serve a motion to retain
20 confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g),
21 if applicable). Any such motion must be filed within 21 days of the initial notice of
22 challenge or within 14 days of the parties agreeing that the meet and confer process will
23 not resolve their dispute, whichever is earlier. The motion must include a certification,
24 in the motion or in a declaration or affidavit, that the movant has engaged in a good
25 faith meet and confer conference with other affected parties in an effort to resolve the

1 dispute without court action. The certification must list the date, manner and
 2 participants to the conference. The burden of persuasion in any such motion shall be on
 3 the designating party. Frivolous challenges, and those made for an improper purpose
 4 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
 5 expose the challenging party to sanctions. All parties shall continue to maintain the
 6 material in question as confidential until the court rules on the challenge.

7 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
 8 OTHER LITIGATION

9
 10 If a party is served with a subpoena or a court order issued in other litigation that
 11 compels disclosure of any information or items designated in this action as
 12 “CONFIDENTIAL,” that party must:

13 (a) promptly notify the designating party in writing and include a copy of
 14 the subpoena or court order;

15
 16 (b) promptly notify in writing the party who caused the subpoena or order
 17 to issue in the other litigation that some or all of the material covered by
 18 the subpoena or order is subject to this agreement. Such notification shall
 19 include a copy of this agreement; and

20 (c) cooperate with respect to all reasonable procedures sought to be
 21 pursued by the designating party whose confidential material may be
 22 affected.

23 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL
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1 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
 2 confidential material to any person or in any circumstance not authorized under this
 3 agreement, the receiving party must immediately (a) notify in writing the designating
 4 party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized
 5 copies of the protected material, (c) inform the person or persons to whom
 6 unauthorized disclosures were made of all the terms of this agreement, and (d) request
 7 that such person or persons execute the “Acknowledgment and Agreement to Be
 8 Bound” that is attached hereto as Exhibit A.

9 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
 10 PROTECTED MATERIAL

11 The inadvertent or unintentional disclosure by a designating party of confidential
 12 information shall not be deemed a waiver in whole or in part of the designating party’s
 13 claim of protection pursuant to this Protective Order. Any such inadvertently or
 14 unintentionally disclosed information shall be designated as confidential as soon as
 15 reasonably practicable after the designating party becomes aware of the erroneous
 16 disclosure and shall thereafter be treated as such by all receiving persons under the
 17 terms of this Protective Order. Upon receipt of the properly designated documents, the
 18 receiving party must return or destroy the non-designated set within three (3) days of
 19 being informed of the inadvertent disclosure. If the receiving party destroys the
 20 documents, then the receiving party must provide written certification of the destruction
 21 to the designating party within three (3) days of receipt of the properly designated
 22 documents. In addition, the production or disclosure by either party of an attorney-
 23 client privileged, attorney work product, or other protected document or information,
 24 whether inadvertent or otherwise, shall not be deemed a waiver of the privilege, work
 25 product, or other protection or immunity from discovery by the party in this or any

1 subsequent state or federal proceeding pursuant to Federal Rule of Evidence 502
2 regardless of the circumstances of disclosure. If any party becomes aware of the
3 production or disclosure of such protected information, that party shall provide written
4 notice, to the designating party, of such production or disclosure within three (3) days
5 after it becomes aware that protected information has been disclosed or produced.

6 10. NON TERMINATION AND RETURN OF DOCUMENTS

7 Within 60 days after the termination of this action, including all appeals, each
8 receiving party must provide the receiving party with a list of documents that have been
9 designated as confidential by the designating party in this litigation and produced to the
10 receiving party, and which the designating party wants destroyed. Within 14 days after
11 the receipt of this list, the receiving party must shred (if paper) or delete (if electronic) all
12 confidential materials including all copies, extracts and summaries thereof.

13 Alternatively, the parties may agree upon appropriate methods of destruction. This
14 includes confidential information contained within expert reports or deposition or
15 hearing transcripts.

16 Notwithstanding this provision, counsel are entitled to retain one archival copy
17 of all documents filed with the court, trial, deposition, and hearing transcripts,
18 correspondence, deposition and trial exhibits, expert reports, attorney work product,
19 and consultant and expert work product, even if such materials contain confidential
20 material.

21
22 The confidentiality obligations imposed by this agreement shall remain in effect
23 until a designating party agrees otherwise in writing or a court orders otherwise. The
24 Court shall retain jurisdiction over the parties, their attorneys and all other persons to
25 whom confidential material has been disclosed for the purpose of enforcing the terms of
this Protective Order.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED on December 27, 2023.

DATED on December 27, 2023.

EMBER LAW PLLC

LEWIS BRISBOIS BISGAARD & SMITH

s/Chance Yager

s/Gregory S. Worden

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By: Gregory S. Worden, WSBA# 24262

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Attorneys for Plaintiff

Attorneys for Defendant State Farm

PURSUANT TO STIPULATION, IT IS SO ORDERED

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents, electronically stored information (ESI) or information, whether inadvertent or otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection

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1 recognized by law. This Order shall be interpreted to provide the maximum protection
2 allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not apply.
3 Nothing contained herein is intended to or shall serve to limit a party's right to conduct
4 a review of documents, ESI or information (including metadata) for relevance,
5 responsiveness and/or segregation of privileged and/or protected information before
6 production. Information produced in discovery that is protected as privileged or work
7 product shall be immediately returned to the producing party.

8 DATED: December 28, 2023

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11 _____
12 Kymberly K. Evanson
13 United States District Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under
penalty of perjury that I have read in its entirety and understand the Stipulated
Protective Order that was issued by the United States District Court for the Western
District of Washington on [date] in the case of _____ *Tyler Nein v. State Farm*
Fire and Casualty Company, No. 2:23-cv-00683-KKE. I agree to comply with and to be
bound by all the terms of this Stipulated Protective Order and I understand and
acknowledge that failure to so comply could expose me to sanctions and punishment in
the nature of contempt. I solemnly promise that I will not disclose in any manner any
information or item that is subject to this Stipulated Protective Order to any person or
entity except in strict compliance with the provisions of this Order.

Within sixty (60) days of the final determination of this action, I shall provide
written confirmation to counsel of record for Plaintiff that documents produced by State
Farm (or disclosing the contents of documents) designated by State Farm as
“Confidential” (“Confidential Information”) has been shredded (if paper) or deleted (if
electronic), including the shredding and deletion of all copies, extracts and summaries
thereof.

I further agree to submit to the jurisdiction of the United States District Court for
the Western District of Washington for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action.

1 Date:

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3 City and State where sworn and signed:

4 Printed name:

5 Signature:
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